

FILED
Clerk
District Court
APR 05 2023

IN THE UNITED STATES DISTRICT COURT for the Northern Mariana Islands
FOR THE NORTHERN MARIANA ISLANDS By 
(Deputy Clerk)

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUANA C. LEON GUERRERO,

Defendant.

Criminal Case No. 1:23-cr-00005

**DECISION AND ORDER
APPOINTING COUNSEL AND
IMPOSING PARTIAL PAYMENT**

Before the Court is Defendant Juana C. Leon Guerrero's second Financial Affidavit in support of her oral request for court appointed counsel. (ECF No. 25.) Having reviewed Defendant's second financial affidavit, the Criminal Justice Act at 18 U.S.C. § 3006A which governs representation of defendants, and Volume 7A of the Guide to Judiciary Policy concerning Defender Services, the Court hereby GRANTS Defendant's request for court appointed counsel and ORDERS that Attorney Robert T. Torres is appointed to represent Defendant in the above-entitled case. However, based on the Court's evaluation of Defendant's financial information, Defendant is required to pay the amount of **\$1,500.00** to the Clerk of Court at the U.S. District Court for the Northern Mariana Islands within 30 days of this Order to pay for some of the costs of her legal representation.

I. PROCEDURAL BACKGROUND

A grand jury returned an indictment against Defendant on March 16, 2023 charging her with Conspiracy to Unlawfully Produce an Identification Document in violation of 18 U.S.C. § 1028(a)(1), (c)(3)(A) & (f). (ECF No. 1.) It is punishable by not more than 15 years imprisonment and therefore a Class C felony offense. 18 U.S.C. §§ 1028(b)(1)(A)(ii), 3559(a)(3). Defendant

1 made her initial appearance and was arraigned on the Indictment by Magistrate Judge Heather L.
2 Kennedy four days later where Defendant entered a plea of not guilty. (Min., ECF No. 10.)

3 Prior to Defendant's initial appearance in court, Attorney Robert T. Torres was court-
4 appointed counsel under the Criminal Justice Act ("CJA") to represent Defendant. (ECF No. 6.)
5 However, the Magistrate Judge found that Defendant was not eligible for court-appointed counsel
6 based on the financial affidavit she submitted. (Min., ECF No. 10; Financial Affidavit, ECF No.
7 5.) Defendant was thereafter ordered to pay \$150.00 before the end of the month for reimbursement
8 of court-appointed counsel's time spent up to the arraignment, and set a status conference for April
9 3, 2023, to determine the status of Defendant's employment and her efforts to retain private
10 counsel. (Min., ECF No. 10.)

11 Defendant subsequently paid \$150.00, and the April 3, 2023 status conference was held
12 before the undersigned. (Min., ECF No. 24.) At the status conference, Defendant informed the
13 Court that she is no longer employed and is unable to afford counsel. (*Id.*) Nevertheless, based on
14 the original financial affidavit and the Pretrial Services Report, the Court determined that
15 Defendant was not eligible for court-appointed counsel. The Court further encouraged Defendant
16 to pursue private counsel and to update her financial affidavit to give the Court an opportunity to
17 fully re-evaluate any change in circumstances. (*Id.*) Defendant subsequently met with the U.S.
18 Probation Officer and submitted an updated Financial Affidavit. (ECF No. 25.)

19 II. LEGAL STANDARD

20 The Criminal Justice Act of 1964 and its revisions are codified at 18 U.S.C. § 3006A.
21 Under the Act, district courts are mandated to provide for representation of defendants charged
22 with felonies or Class A misdemeanors who are "financially unable to obtain adequate
23 representation." 18 U.S.C. § 3006A(a). Although the Act does not define these terms, the

1 Administrative Office has issued Guidelines for judges to follow in determining financial
2 eligibility for the appointment of counsel under the CJA. *See* Guide to Judiciary Policy, Volume
3 7A, Chapter 2 § 210.40 (2022). Under these Guidelines, a defendant is “financially unable to obtain
4 counsel” within the meaning of the Act and is therefore entitled to appointed counsel if her “net
5 financial resources and income are insufficient to obtain qualified counsel.” § 210.40.30(a). In
6 making this determination, the court must consider “the cost of providing the [defendant] and his
7 dependents with the necessities of life.” *Id.* at (a)(1). Unfortunately, the Guidelines do not define
8 “net financial resources,” “income,” “qualified counsel,” or “necessities of life.”

9 The Guidelines counsel that, in close cases, any doubts as to a person’s eligibility should
10 be resolved in the defendant’s favor since erroneous determination may be corrected later. *Id.* at
11 (b). The Guidelines contemplate that there will be some cases in which a defendant is only partially
12 eligible for counsel, i.e., a defendant’s net financial resources and anticipated income prior to trial
13 will be in excess of the amount needed to provide her and her dependents with the necessities of
14 life but are not enough to pay for counsel. § 210.40.40. In these situations, the court should direct
15 the defendant to pay the “available excess funds” to the clerk at the time of appointment and from
16 time to time during the proceedings. *Id.* Furthermore, the initial determination of eligibility should
17 be made without regard to the financial ability of the person’s family unless the family indicates a
18 willingness and financial ability to retain counsel promptly. § 210.40.50.

19 III. DISCUSSION

20 At the outset, the Court notes that at the status conference hearing, Defendant stated that
21 she is no longer employed at the Department of Public Safety. However, she clarified with the
22 U.S. Probation Officer that she was noticed on March 23, 2023 that she has been placed on leave
23 without pay. (ECF No. 25.) The letter from DPS indicates this status is effective March 27, 2023.

1 Furthermore, the Court retracts one basis stated at the hearing to deny Defendant the
2 appointment of counsel. Whereas the Court was considering the total household income, the Court
3 in fact will not consider other family members' source of income other than her husband's given
4 that she has her community property interest in her husband's salary. *See* 8 CMC § 1820; *Reyes v.*
5 *Reyes*, 2004 MP 1 ¶ 31("[E]ach spouse is entitled to an undivided one-half interest in all income
6 generated during the marriage."). Undersigned also informed Defendant that she was to consider
7 all her assets including her savings and pension funds. Defendant supplemented her amended
8 Financial Affidavit with copies of paycheck stubs.

9 Based on Defendant's second financial affidavit, the Court finds that Defendant's current
10 financial resources and lack of income are insufficient for Defendant to pay for both qualified
11 counsel and life's necessities. To be clear, to obtain court appointed counsel, defendant has the
12 burden to show that she is unable to afford to pay for a lawyer, not that she is indigent. *See United*
13 *States v. Parker*, 439 F.3d 81, 96 (2d Cir. 2006); *see United States v. Alghaithi*, 2019 WL 2605201,
14 at *4 (D. Ariz. Apr. 12, 2019) (determining a defendant's ability to repay attorney's fees by
15 examining the liquidity of the defendant's finances, his personal and familial needs, or changes in
16 financial circumstances (quoting *Museitef v. United States*, 131 F.3d 714, 716 8th Cir. 1997)).
17 Here, the Court finds that Defendant has some financial resources that are not readily liquid, and
18 given the imminent jury trial date set for May 23, 2023 under the Speedy Trial Act, the Court errs
19 on the side of appointing counsel. Nevertheless, the Court also finds that Defendant is capable of
20 partially paying the costs of adequate counsel in the amount of \$1,500.00. Furthermore, Defendant
21 is placed on notice that the Court may reconsider her eligibility for appointment of counsel during
22 the entirety of this case in the event any new information is discovered.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court hereby APPOINTS Attorney Robert T. Torres to
3 represent Defendant Juana Leon Guerrero in this case. Defendant Juana C. Leon Guerrero is hereby
4 ORDERED to pay **\$1,500.00** as a lump sum payment to the Clerk of Court for the District of the
5 Northern Mariana Islands. Payment shall be made within thirty days of this Order. Finally, the
6 status conference set for April 19, 2023 at 1:00 p.m. is hereby VACATED.

IT IS SO ORDERED this April 5, 2023.



RAMONA V. MANGLONA

Chief Judge